

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amendment)

401 KAR 45:250. Special waste permit fees.

RELATES TO: KRS 224.40

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305, 224.50-760

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(20) states that the cabinet may provide by administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. This chapter establishes standards for special waste sites or facilities. This administrative regulation establishes a fee schedule for the issuance and modification of special waste site or facility permits.

Section 1. Applicability.

- (1) The provisions of this administrative regulation shall apply to the owner or operator of each special waste site or facility required to apply for a permit, permit renewal, permit modification, or permit transfer, except publicly-owned facilities.
- (2) The provisions of this administrative regulation shall also apply to special waste site or facility permit applications for the land application of biosolids~~[submitted on or after June 24, 1992]~~.

Section 2. Filing Fees.

- (1) Each permit application shall be accompanied by an appropriate filing fee determined as follows:

| Application | Fee |
|---|---------|
| (a) Notice of intent | \$500 |
| (b) Request for alternate specification to design criteria or variance from regulatory requirements | \$500 |
| (c) Formal application and modifications to expand the facility horizontally | \$5,000 |
| (d) Construction/operation permit | \$500 |
| (e) Renewal | \$500 |
| (f) Permit modifications other than horizontal expansions: | |
| 1. Vertical expansions | \$1,000 |
| 2. Modification to closure plan | \$500 |
| 3. Receipt of waste from new source | \$50 |
| 4. Change of ownership or transfer of an existing permitted facility | \$500 |
| 5. Cabinet mandated increase in financial assurance | \$0 |
| 6. Closure of a facility that is not under a current special waste facility permit | \$1,000 |
| 7. Modifications not otherwise specified | \$500 |
| (g) Emergency permit | \$500 |
| (h) Research, development and demonstration permit | \$2,500 |

(2) A filing fee shall be in the form of a check or money order and made payable to the Kentucky State Treasurer. Filing fees shall not be refundable.

REBECCA GOODMAN, Secretary

APPROVED BY AGENCY: August 24, 2023

FILED WITH LRC: August 24, 2023 at 4:00 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2023, at 5:30 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky 40601. The public hearing can also be accessed at the following website address <https://us02web.zoom.us/j/86146637051> or can be accessed toll free by telephone: 833-548-0282 using Meeting ID code: 861 4663 7051 and Passcode 139147. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to Michael.Mullins@ky.gov or mail this information to Michael Mullins, Department for Environmental Protection, Office of the Commissioner, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please put "Land Application of Biosolids" as the subject line, and state in the body of the message if you plan to speak during the hearing. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Env Scientist Consultant II., 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes fees for the permitting processes regulated in 401 KAR Chapter 45.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish all of the fees for this chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

The authorizing statutes provides the department the authority to promulgate administrative regulations and administer special waste programs. This administrative regulation establishes all of the fees for this chapter as it relates to special waste permitting.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation is necessary to establish permitting fees for 401 KAR Chapter 45. These fees are used in conjunction with general funds to fund the program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment to this administrative regulation clarifies that the fees established in the administrative regulation do apply to the new biosolids process.

(b) The necessity of the amendment to this administrative regulation:

the amendment was necessary so the department can capture the fees that were already being charged for permit application review under the new biosolids process.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment conforms to the authorizing statutes by clarifying the fees for permitting processes apply to the biosolids process in 401 KAR 45:105.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment assists in the administration of the statutes by letting the regulated entities know that the fees in this administrative regulation apply to the permitting processes in 401 KAR 45:105.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

The total universe of potential impacted entities is 399. 394 of those are wastewater treatment plants that either already have a permit (54) or could get a permit in the future (340). The remaining 5 are private entities (contractors) that already have permits.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the

change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Each entity mentioned in question (3) will need to remit the fee related to the appropriate permitting action when submitting a biosolids permitting application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There will not be an additional cost to the regulated entities in complying with this administrative regulation. The fees established in this administrative regulation were already being assessed to entities getting a permit to land apply sewage sludge. Now those former permitting actions will be permitted under this new biosolids process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The regulated entities will have a streamlined process for the land application of biosolids that is in conformance with the corresponding federal regulation. It will also be clear that the fees established in this administrative regulation do apply to the permitting process established in 401 KAR 45:105.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There will not be a cost to the agency to implement this new administrative regulation.

(b) On a continuing basis:

There will not be a cost to the agency to implement this new administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The funding source for this program will be a mix of restricted funds from the fees charged for application review and general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There will not be a need to increase fees or funding associated with this new administrative regulation. The agency currently regulates wastewater treatment plant sludges and will simply use the current personnel and funding to implement the new process.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation establishes fees for this chapter. The current fees that are charged for application review (401 KAR 45:250) will continue to be applied to biosolid applications under this new process. There are no increases in the fees.

(9) TIERING: Is tiering applied?

No. All entities that submit an application for a biosolids permit will have their application reviewed in accordance with the application information submitted and will not be treated differently.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This administrative regulation will impact not only the Department for Environmental Protection's Division of Waste Management but also local governments that have wastewater treatment plants that generate sludge.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 224.10-100, 224.40-305, 224.50-760, 40 C.F.R. Part 503

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation will not generate any additional revenue. The fee in this administrative regulation will apply to the applications in this chapter.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This administrative regulation will not generate any additional revenue for the agency.

(c) How much will it cost to administer this program for the first year?

There will be no additional costs associated with this new biosolids process. The agency will use existing staff and funding to accomplish the goals of the statute.

(d) How much will it cost to administer this program for subsequent years?

Currently the agency does not believe there will be an increase in costs to run the program in the future. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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Revenues (+/-):This administrative regulation will not generate any new revenues due to the biosolids being mainly regulated by 40 C.F.R. Part 503. The cabinet will charge the same for this new permitting process as it did for the existing permitting process for the regulation of these materials.

Expenditures (+/-):The cabinet will use existing staff and the same funding source to process and regulate biosolids under this new material.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

Regulated entities will save \$500 per application. The current process is to charge \$500 for a notice of intent and then an additional \$5,000 for a formal application. This new process does not have a notice of intent and therefore the applicant will not be required to pay the \$500.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

The savings in subsequent years will depend on the number of applications received by the agency. The applicant will still save \$500 per application due to the notice of intent not being required.

(c) How much will it cost the regulated entities for the first year?

There will not be a cost increase to regulated entities related to this proposal. This material is currently permitted and regulated by the cabinet and a fee of \$5,500 (for new formal permits) will be reduced to \$5,000 with this new proposal.

(d) How much will it cost the regulated entities for subsequent years?

The cost in subsequent years will depend on the number of applications submitted by regulated entities. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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Cost Savings (+/-):The cost savings will be \$500 per application. However, a definite cost savings cannot be provided as it will depend on the number of applications received.

Expenditures (+/-):The expenditures will be relatively the same except for the cost savings mentioned above.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This proposal will not have a major economic impact as defined KRS 13A.010(13).